THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition Nos.11973 of 2004 & 11715 of 2007
(Common Judgment)

% 26.07.2007

Between:

Agarwal Foundaries

…Petitioner

And

Central Power Distribution Company of A.P. Ltd.,
Rep. By its Chairman and Managing Director, and others.

…Respondents

! COUNSEL FOR PETITIONER: Sri M.P. Chandramouli,

^ COUNSEL FOR RESPONDENTS: Sri N.Subba Reddy, Senior Counsel

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? CITATIONS:

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Writ Petition Nos.11973 of 2004 & 11715 of 2007

COMMON JUDGMENT:

Both the Writ Petitions are filed by the same petitioner. A common question arises for consideration in them. Hence, they are disposed of, through a common judgment.

The petitioner is a small-scale industry, and manufactures Mild Steel Ingots. It has an induction furnace, which needs H.T power supply. Petitioner obtained power supply through the Central Power Distribution Company, the 1st respondent, as well as through private power producers. Initially, it used to be served with 11 KV line. In July, 2000, at the request made by the petitioner, the contracted load of the petitioner was enhanced to 1501 KVA, in terms of maximum demand, and the supply was channeled through a 33 KV feeder. A portion of 33 KV line was installed and erected by the petitioner, at its own cost, with the permission of the respondents.

The extent of power, utilized by the petitioner, fluctuated from time to time. On certain occasions, it crossed 5000 KVA. A tariff order was passed by the A.P. Electricity Regulatory Commission, on 23-03-2004, dealing with various aspects. In Annexure-D appended to the tariff order, General Conditions of H.T supply were indicated. Apart from other details, it prescribed the limits of supply, that can be availed by the consumers. A distinction is maintained between HT consumers, availing supply through common feeders, on the one hand, and the independent feeders, on the other hand. The consumers of the first category were permitted fluctuation, up to 33,000 volts, if the CMD is 1501 KVA to 5000 KVA.

If it exceeded 5000 KVA, it attracted surcharge. For the second category of consumers, the maximum limit is stipulated as 10,000 KVA. On the ground that the consumption of the petitioner exceeded 5,000 KVA at times, surcharge was levied upon it; on the premise that

the petitioner is supplied power through a common feeder. A bill dated 26-06-2004 was issued in which, surcharge was levied. W.P.No.11973 of 2004 is filed against it.

The petitioner applied for sanction of the load of 4,499 KVA in addition to the existing CMD of 1501 KVA. The respondents-company sanctioned the same through proceedings dated 07-04-2005, subject to certain conditions. One of the conditions is that the petitioner must meet the cost of the existing 33 KV line from the point of its origin, to get the status of an independent feeder. Correspondence ensued thereafter. The petitioner insisted that it is already being supplied power through an independent feeder of 33 KV., and it is not necessary to bear any additional cost. Untimely, through proceedings, dated 28-04-2007, the Chief General Manager, of the 1st respondent company, required the petitioner to pay the charges, in the form of the cost of the 33 K.V. feeder from 220/132/33KV Shapurnagar Sub-station, including take off arrangements, as a condition precedent, for the sanction of additional 4,499 KVA, totalling 6,000 KVA. The said proceedings are challenged in W.P.No.11715 of 2007.

The principal contention of the petitioner is that it is already being supplied power through an independent feeder and that there is no basis for the respondents in treating it as a common feeder. It is urged that several officials and authorities of the respondents have unequivocally certified the feeder to be an independent one, and there is no basis for treating it as a common feeder.

On behalf of the respondents, two counter affidavits are filed. The distinction among common feeder, independent feeder and dedicated feeder, is explained. It is stated that the feeder through which, the petitioner is being supplied the power, is not an

independent or dedicated feeder, and on the other hand, it is a common feeder, and that as long as that status continues, the maximum load, that can be supplied to the petitioner, cannot exceed 5,000 KVA.

Sri M.P. Chandramouli, learned counsel for the petitioner, submits that, right from the time, when 11 KV feeder was converted to the one of 33 KV, the feeder was treated as an independent one, for the petitioner. He contends that the petitioner has not only incurred the expenditure, for laying the line, but also paid supervising charges, at 10%, and other related charges. He submits that the action of the respondents, in levying surcharge against the petitioner, whenever the maximum demand exceeded 5,000 KVA, or requiring the petitioner to pay the cost of the line, that emanates from 220 KV Sub-station, is unreasonable, arbitrary and irrational. He has drawn the attention of the Court to several letters, addressed by different authorities of the respondents-company.

Sri N. Subba Reddy, learned Senior Counsel, appearing for the respondents, submits that the petitioner is supplied power through a common feeder, and the same cannot be treated, either an independent or dedicated feeder. He contends that the letters addressed by some of the authorities, contrary to the factual situation, or legal interpretation of the tariff order, cannot confer any right on the petitioner. He has referred to the various aspects of the tariff order, and submits that no exception can be taken to the proceedings impugned in the writ petitions.

As pointed out in the preceding paragraphs, the petitioner was initially supplied power through 11 KV feeder. At the request made by the petitioner, the maximum demand was enhanced to 1501 KVA. This required the supply through 33 KV feeder. Through their letter

dated 06-09-2000, the Superintending Engineer, Operation, permitted the petitioner to erect the required length of 33 KV line, at its own cost, to connect an existing line, at a distance of about 300 metres. Apart from that, the petitioner was required to pay supervising charges of 10% of the cost.

According to the tariff order dated 03-06-2000, the limits were fixed for the fluctuation of maximum demand/consumption of power. This, in turn, depended upon the nature and character of the feeder, through which the consumer is supplied the power. In case, the power supply is through a common feeder, the fluctuations can touch 5,000 KVA. If it exceeded that, it invited surcharge. On the other hand, if the supply is through an exclusive feeder, the fluctuation can touch 10,000 KVA.

The consumption of power/the maximum demand, by the petitioner exceeded 5,000 KVA, occasionally. Therefore, the respondents started levying surcharge, as and when the limits were exceeded. The petitioner raised an objection to the levy of surcharge and challenged the action of the respondents. Simultaneously, it has taken steps to get the contracted maximum demand, enhanced to 6,000 KVA. Sanction was accorded for such enhancement, by imposing a condition, that the petitioner shall meet the expenditure to get the feeder, emanating from 220/132/33KV Shapurnagar Sub-station, up to the transformer of the petitioner, classified as an independent feeder. This is resisted by the petitioner, on the ground that it is already being fed through an independent feeder, and the question its being required to pay the said amount.

It is no doubt true that several authorities of the respondents-company have addressed letters, suggesting that the petitioner is being supplied through an independent feeder. Reference in this

context may be made, to the letter dated 11-08-2003, addressed by the Director, Commercial, the letter dated 31-07-2003, addressed by the Superintending Engineer, Operation/Ranga Reddy Circle (North) etc. The controversy does not, however, rest with that. Since serious consequences flow, either from the point of view of the petitioner, or that of the respondents, it needs a close scrutiny. The supply of electricity, generated at a station, undergoes several transformations, by the time it reaches a consumer. It has to be stepped down, at various levels. The stepping down takes place at three levels, in the context of supply to industries. In a substation of very high magnitude of 220 KV, the stepping down takes place to 132 KV and thereafter, to 33 KV. Normally, substations of 33 KV are located at different places. There, the further stepping down of 11 KV takes place. A feeder, in the parlance of electric supply, is the line, through which the power, in a stepped down version, flows from a substation. For instance, from 33 KV sub-station, the feeders of 11 KV emanate. Similarly, the feeders with the capacity of 33 KV have to emanate from a sub-station of higher capacity. The question of a feeder, carrying the power of the same intensity, as that of the substation; does not arise.

There does not exist any difficulty in understanding the meaning of a '*common feeder*'. It is the one, which serves the necessities of more consumers, than one. Some explanation needs to be offered, to describe the '*independent*' and '*dedicated*' feeders. These terms are not defined, or explained, in the Electricity Act, Tariff Order, or in General Terms and Conditions of Supply.

In the counter-affidavit filed on behalf of the respondents, it is stated that an independent feeder is the one, which supplies a consumer independently, with the same voltage. Dedicated feeder, on the other hand, is described as the one, which emanates from the sub-

station of a higher voltage, and exclusively serves the consumer. It is illustrated by stating that, 33 KV dedicated feeder means, the one, which emanates from 220/132/33 KV sub-station and exclusively serves the needs of the consumer with the supply at 33 KV. In the Compact Oxford Reference Dictionary, the meaning of the word "*dedicated*" is furnished as under:

> "1. Devoted to a task or purpose.
> 2. Used or designed for one particular purpose only".

The common aspect that runs across both of them is, that the feeders would function, exclusively for an identified consumer, as distinguished from a common feeder, which serves number of consumers.

In the context of tariff order, the little distinction, that exists between the independent and dedicated feeders, gets blurred, inasmuch as both the aspects are treated as essential. The relevant clauses, in Appendix-D, to the Tariff Order dated 23-03-2004, read as under:

> "**GENERAL CONDITIONS OF H.T. SUPPLY**
> The foregoing tariffs are subject to the following conditions:
> (1) **A. VOLTAGE OF SUPPLY**
> The voltage at which supply has to be availed by:
> (i) HT consumers, availing supply on common feeders shall be:
> For Total Contracted Demand with the Licensee and all other sources like A.P.G.P.C.L., Mini Hydel, Wind Power, MPPs, Co-generating Plants etc.
>
Upto 1500 KVA	11000 Volts
1501 KVA to 5000 KVA	33000 Volts
Above 5000 KVA	132000 Volts or 220000 Volts as may be decided by Licensee

> (ii) HT Consumers availing supply through <u>independent</u> feeders from the substations shall be:
> For total contracted Demand with the licensees and all other sources like APGPCL, Mini Hydel, Wind Powers,

MPPs, co-generating plants etc.

Upto 2500 KVA	11000 Volts
2501 KVA to 10,000 KVA	33000 Volts
Above 10000 KVA	132000 Volts or 220000 Volts

The relaxations are subject to the fulfillment of following conditions:

(a) The consumer should have an exclusive dedicated feeder from the substation;

(b) The consumer shall pay full cost of the service line as per standards specified by APTRANSCO/DISCOM including take off arrangements at substation;

(c) The consumer shall not use captive generation except as permitted by the APERC."

From a perusal of the same, it is evident that the benefit under Clause-A(ii) can be extended to only when the supply is through a feeder, which is independent as well as dedicated. Therefore, it needs to be seen as to whether the petitioner fulfills these conditions.

From the facts placed before this Court, it is evident that the 33 KV feeders emanate from 220/132/33 KV substation, at Shapurnagar. Before the 33 KV feeder reaches the premises of the petitioner, it serves the needs of 33 KV substation, at Jeedimetla.

It is also stated that some more consumers are served through the feeder. The line exclusively erected by the petitioner is only a small portion of 300 metres, at the end. The petitioner does not dispute that, except for the portion of 300 metres, rest of the line running into few kilometers, was erected by the respondents. Even if, it can be said that the petitioner is the exclusive beneficiary of that portion of the line, which it had erected, same cannot be said about the remaining portion.

To understand the issue from the common parlance, the petitioner can avail the benefit of the Clause-A(ii), if only it is being

served directly and exclusively, through a line, which emanated from the sub-station at Shapurnagar, and when no other consumers are permitted to draw power from it. Such a situation does not exist in the present case. Therefore, the stand taken by the respondents, that the line that supplies power to the petitioner is not an independent or dedicated feeder cannot be found fault with.

Now, it needs to be seen as to: 1) whether the levy of surcharge on the petitioner can be sustained; and 2) whether it can be required to comply with the conditions imposed in the letter, dated 28-04-2007.

There existed fairly good amount of uncertainty in the matter of classification of line that serves the petitioner. In fact, the pendulum mostly swung in favour of the petitioner, as is evident from the letters, addressed by the Director (Commercial), of the respondents-company and the Superintending Engineer (Operation). In his letter dated 11-08-2003, the Director observed as under:

> "…Regarding independent feeder, the CPDCL consider your feeder as an independent…".

The Superintending Engineer, in his letter dated 31-07-2003 observed as under:

> "Reference to the above, it is to submit that the 33 KV feeder to M/s Agarwal Foundries is emanating from 220/132/33 KV Shapurnagar Sub-Station which is independent from 33/11 KV Jeedimetla Sub-Station-II with Metering arrangements and breaker control and there are no other loads tagged on to this feeder and hence it amounts to be considered as independent feeder".

Thus, the authorities treated the feeder, serving the petitioner, as an independent one. In fact, the Superintending Engineer addressed another letter, dated 13-07-2004, to the Chief General Manager, recommending that it is not a case for levy of surcharge on

the petitioner. When such was the uncertainty, the petitioner naturally reeled under the impression that it can cross 5000 KVA mark. Further, it is not as if the petitioner did not pay for the power consumed by it. Therefore, the surcharge levied, up to the date of the judgment, cannot be sustained. Henceforth, the petitioner shall be liable to be levied the surcharge wherein it crosses the maximum demand of 5,000 KVA, unless any change takes place.

As regards the second aspect, it has already been held that the feeder is not an independent or dedicated one for the petitioner, and in that view of the matter, the conditions pointed in the proceedings dated 28-04-2007 have to be complied with.

In the result, W.P.No.11973 of 2004 is allowed, with an observation that the petitioner shall be liable to be levied surcharge henceforth, in the event of exceeding the limits; and W.P.No.11715 of 2007 is dismissed.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.26-07-2007.

Note:
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